

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comcast Cable Communications, LLC	)	CSR 7549-E
Petitions for Determination of Effective	)	CSR 7550-E
Competition in various Pennsylvania	)	
Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 16, 2008**

**Released: April 17, 2008**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>5</sup> For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

**II. DISCUSSION**

**A. The Competing Provider Test**

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject

<sup>1</sup>See 47 U.S.C. § 543(a)(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

<sup>3</sup>47 C.F.R. § 76.906.

<sup>4</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>5</sup>See 47 C.F.R. §§ 76.906 & 907.

to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;<sup>6</sup> this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.<sup>7</sup>

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>8</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>9</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>10</sup> The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>11</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>12</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.<sup>13</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.<sup>14</sup> Petitioner sought to

<sup>6</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>7</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>8</sup>*See* Petitions at 3-4.

<sup>9</sup>*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

<sup>10</sup>47 C.F.R. § 76.905(e)(2).

<sup>11</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 5.

<sup>12</sup>*See* Petitions at 5 and Exhibit 2.

<sup>13</sup>*See* Petitions at 3.

<sup>14</sup>*Id.* at 6. Comcast is the largest MVPD in the Communities of Adams, Applewold, Armagh, Blacklick, Blairsville, Bolivar, Burrell, Cambria, Carrollton, Clymer, Croyle, Delmont, East Carroll, East Conemaugh, East Franklin, Edensburg, Ehrenfeld, Elder, Ernest, Export, Ford City, Ford Cliff, Freeport, Hastings, Homer City, Kittanning (borough), Latrobe, Laurel Mountain, Ligonier (Borough), Ligonier (Township), Murrysburg, Nanty-Glo, New Florence, Northern Cambria, Paint (Borough), Paint (Township), Patton, Plum, Portage (Borough), Portage (Township), Scalp Level, South Fork, Summerhill (Borough), Summerhill (Township), Susquehanna, Vintondale, West Carroll, West Kittanning, West Wheatfield, White, Wilmore, Windber, Worthington, and Youngstown. However, Comcast is unable to determine which MVPD is the largest in the Communities of Barr, Black Lick, (continued....)

determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a five digit zip code basis.<sup>15</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>16</sup> as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

#### **B. The Low Penetration Test**

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.<sup>17</sup> Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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Burnside, Center, Cherry Tree, Cherryhill, Creekside, East Wheatfield, Fairfield, Glen Campbell, Green, Marion Center, Montgomery, Pine, and Rayne because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS subscriber. Nevertheless, Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceeds 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied. Additionally, CSR-7550-E only pertains to Burnside (PA3335) which exists on a separate Comcast cable system and therefore required the filing of a separate petition with a separate filing fee. Burnside (PA2407) is included in the list of Communities in CSR-7549-E, along with all of the other Communities at issue in this Memorandum Opinion and Order.

<sup>15</sup>Petitions at 7. Comcast states that because five digit zip codes do not perfectly align with franchise boundaries, it has reduced the reported number of DBS subscribers in each zip code by an allocation ratio (the number of households in the franchise area over the number of households in the zip area). *Id.* See, e.g., Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (MB 2005) (approving of a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area).

<sup>16</sup>Petitions at 8 and Exhibit 6.

<sup>17</sup>47 U.S.C. § 543(l)(1)(A).

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>18</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 7549-E and CSR-7550-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

## CSR-7549-E

<b>Communities</b>	<b>CUIDS</b>
<b>Adams</b>	<b>PA0036</b>
<b>Allegheny</b>	<b>PA3506</b>
<b>Applewold</b>	<b>PA0577</b>
<b>Armagh</b>	<b>PA2203</b>
<b>Banks</b>	<b>PA3334</b>
<b>Barr</b>	<b>PA1557</b>
<b>Black Lick Township (Indiana County)</b>	<b>PA2895 PA3333</b>
<b>Blacklick Township (Cambria County)</b>	<b>PA2299</b>
<b>Blairsville</b>	<b>PA0938</b>
<b>Bolivar</b>	<b>PA2282</b>
<b>Buffington</b>	<b>PA3240</b>
<b>Burnside</b>	<b>PA2407</b>
<b>Burrell</b>	<b>PA0946</b>
<b>Cambria</b>	<b>PA0816</b>
<b>Carrolltown</b>	<b>PA0121</b>
<b>Center</b>	<b>PA0942 PA2968</b>
<b>Cherry Tree</b>	<b>PA1615</b>
<b>Cherryhill</b>	<b>PA2864</b>
<b>Clearfield</b>	<b>PA1560</b>
<b>Clymer</b>	<b>PA0205</b>
<b>Creekside</b>	<b>PA2640</b>

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Croyle	PA0037 PA2404
Delmont	PA1436
East Carroll	PA0122
East Conemaugh	PA0788
East Franklin	PA1981
East Wheatfield	PA2204
Ebensburg	PA0813
Ehrenfeld	PA0339
Elder	PA1559
Ernest	PA1958
Export	PA1437
Fairfield	PA2281 PA2592
Ford City	PA0584
Ford Cliff	PA1976
Freeport	PA0202
Glen Campbell	PA2958
Green	PA2527
Hastings	PA0123
HomerCity	PA0943
Jackson	PA2663
Kittanning Borough	PA0587
Kittanning Township	PA2972
Latrobe	PA0947
Laurel Mtn Park	PA2858
Ligonier Borough	PA1026
Ligonier Township	PA1027
Marion Center	PA2959
Montgomery	PA3122 PA3330

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Murrysville	PA0513
Nanty Glo	PA0787
New Florence	PA2205
Northern Cambria Borough	PA3388
Ogle	PA2665
Paint Township	PA0786
Paint Borough	PA0796
Patton	PA0124
Pine Indiana County	PA2664
Plum	PA1391
Portage Township	PA0448
Portage Borough	PA0449
Rayne	PA2503
Scalp Level	PA0795
South Buffalo	PA3220
South Fork	PA0340
Summerhill Borough	PA0341
Summerhill Township	PA1412 PA2862
Susquehanna	PA1558
Vintondale	PA2301
Washington (Cambria County)	PA3156
Washington Westmoreland County)	PA2354 PA3155
West Carroll	PA0126
West Kittanning	PA0597
West Wheatfield	PA1424 PA2208
White	PA2408

**Wilmore**                      **PA1904**

**Windber**                     **PA0794**

**Worthington**                **PA1977**

**Youngstown**               **PA0940**

**CSR-7550-E**

**Burnside**                    **PA3335**



## ATTACHMENT B

## CSR 7549-E and CSR 7550-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

## CSR 7549-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Adams	PA0036	20.20%	2,521	510
Applewold	PA0577	34.30%	143	49
Armagh	PA2203	61.11%	54	33
Barr	PA1557	37.58%	753	283
Black Lick (Indiana County)	PA2895 PA3333	37.09%	515	191
Blacklick (Cambria County)	PA2299	29.17%	833	243
Blairsville	PA0938	35.62%	1,631	581
Bolivar	PA2282	42.50%	200	85
Burnside	PA2407	37.74%	424	160
Burrell	PA0946	33.31%	1,495	498
Cambria	PA0816	28.78%	2,015	580
Carrolltown	PA0121	24.57%	407	100
Center	PA0942 PA2968	40.51%	2,024	820
Cherry Tree	PA1615	62.68%	142	89
Cherryhill	PA2864	43.89%	998	438
Clymer	PA0205	35.49%	679	241
Creekside	PA2640	73.65%	148	109
Croyle	PA0037 PA2404	17.39%	811	141
Delmont	PA1436	15.33%	1,070	164

East Carroll	PA0122	30.85%	632	195
East Conemaugh	PA0788	22.79%	588	134
East Franklin	PA1981	33.57%	1,546	519
East Wheatfield	PA2204	44.54%	1,026	457
Ebensburg	PA0813	29.55%	1,357	401
Ehrenfeld	PA0339	25.56%	90	23
Elder	PA1559	33.07%	375	124
Ernest	PA1958	28.85%	208	60
Export	PA1437	23.96%	455	109
Fairfield	PA2281 PA2592	43.26%	950	411
Ford City	PA0584	27.53%	1,580	435
Ford Cliff	PA1976	27.07%	181	49
Freeport	PA0202	27.11%	878	238
Glen Campbell	PA2958	40.37%	109	44
Green	PA2527	47.94%	1,431	686
Hastings	PA0123	33.93%	557	189
Homer City	PA0943	42.73%	805	344
Kittanning Borough	PA0587	32.58%	2,032	662
Latrobe	PA0947	17.32%	3,966	687
Laurel Mtn Park	PA2858	42.31%	78	33
Ligonier Borough	PA1026	36.64%	827	303
Ligonier Township	PA1027	35.72%	2, 914	1,041
Marion Center	PA2959	58.38%	173	101
Montgomery	PA3122 PA3330	60.03%	608	365
Murrysville	PA0513	19.20%	7,083	1,360
Nanty Glo	PA0787	20.75%	1,272	264
New Florence	PA2205	45.32%	331	150
Northern Cambria	PA3388	31.71%	1,763	559

**Borough**

<b>Paint Township</b>	<b>PA0786</b>	<b>25.55%</b>	<b>1,323</b>	<b>338</b>
<b>Paint Borough</b>	<b>PA0796</b>	<b>22.67%</b>	<b>397</b>	<b>90</b>
<b>Patton</b>	<b>PA0124</b>	<b>34.54%</b>	<b>886</b>	<b>306</b>
<b>Pine (Indiana County)</b>	<b>PA2664</b>	<b>41.23%</b>	<b>815</b>	<b>336</b>
<b>Plum</b>	<b>PA1391</b>	<b>18.54%</b>	<b>10,270</b>	<b>1,904</b>
<b>Portage Township</b>	<b>PA0448</b>	<b>29.30%</b>	<b>1,232</b>	<b>361</b>
<b>Portage Borough</b>	<b>PA0449</b>	<b>29.22%</b>	<b>1,458</b>	<b>426</b>
<b>Scalp Level</b>	<b>PA0795</b>	<b>24.50%</b>	<b>347</b>	<b>85</b>
<b>South Fork</b>	<b>PA0340</b>	<b>24.80%</b>	<b>452</b>	<b>112</b>
<b>Summerhill Borough</b>	<b>PA0341</b>	<b>31.82%</b>	<b>220</b>	<b>70</b>
<b>Summerhill Township</b>	<b>PA1412</b> <b>PA2862</b>	<b>23.98%</b>	<b>1,009</b>	<b>242</b>
<b>Susquehanna</b>	<b>PA1558</b>	<b>36.79%</b>	<b>829</b>	<b>305</b>
<b>Vintondale</b>	<b>PA2301</b>	<b>30.48%</b>	<b>210</b>	<b>64</b>
<b>West Carroll</b>	<b>PA0126</b>	<b>21.54%</b>	<b>534</b>	<b>115</b>
<b>West Kittanning</b>	<b>PA0597</b>	<b>32.54%</b>	<b>544</b>	<b>177</b>
<b>West Wheatfield</b>	<b>PA1424</b> <b>PA2208</b>	<b>41.53%</b>	<b>903</b>	<b>375</b>
<b>White</b>	<b>PA2408</b>	<b>28.61%</b>	<b>6,025</b>	<b>1,724</b>
<b>Wilmore</b>	<b>PA1904</b>	<b>30.34%</b>	<b>89</b>	<b>27</b>
<b>Windber</b>	<b>PA0794</b>	<b>23.12%</b>	<b>2,019</b>	<b>468</b>
<b>Worthington</b>	<b>PA1977</b>	<b>41.37%</b>	<b>307</b>	<b>127</b>
<b>Youngstown</b>	<b>PA0940</b>	<b>17.51%</b>	<b>31</b>	<b>177</b>

**CSR 7550-E**

<b>Burnside</b>	<b>PA3335</b>	<b>37.74%</b>	<b>424</b>	<b>160</b>
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\*CPR = Percent of competitive DBS penetration rate.

## ATTACHMENT C

## CSR 7549-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Allegheny	PA3506	3,053	4	0.13%
Banks	PA3334	368	2	0.54%
Buffington	PA3240	469	12	2.56%
Clearfield	PA1560	571	19	3.3%
Jackson (Cambria County)	PA2663	1,940	94	4.85%
Kittanning Township	PA2972	871	129	14.81%
Ogle	PA2665	217	19	8.76%
Rayne	PA2503	1,220	112	9.18%
South Buffalo	PA3220	1,013	13	1.28%
Washington (Cambria County)	PA3156	351	25	7.1%
Washington (Westmoreland County)	PA2354 PA3155	2,809	381	13.6%